

Foreclosure Consulting Statement

According to a Maryland Legislative Services Fiscal Note, Maryland Chapter 509 of 2005 provides some protection for homeowners who deal with foreclosure “rescuers.” It requires “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures, and affords basic consumer protections such as a three-day rescission period.

Maryland Chapter 6 of 2008 prohibits a foreclosure consultant from engaging in, arranging, promoting, promising, soliciting, participating in, assisting with, or carrying out a “foreclosure rescue transaction.” A foreclosure rescue transaction is defined as a transaction in which a residence in default is conveyed by a homeowner who retains a legal or equitable interest in all or part of the property and that is designed or intended by the parties to prevent or delay foreclosure proceedings, either actual or anticipated. The interest retained by the homeowner includes an interest under a lease-purchase agreement, an option to reacquire the property, or any other legal or equitable interest in the property conveyed.

That Act requires a foreclosure consulting contract include a statement about the duty of the foreclosure consultant to provide the homeowner with written copies of any research that the consultant has regarding the value of the residence in default. This research includes any information about the sales of comparable properties or any appraisals.

Chapter 6 of 2008 requires a notice in all foreclosure consulting contracts specifying how much money a homeowner must pay; how much money a homeowner will receive, if any; and how much money the foreclosure consultant will receive from any source under the contract. The notice must also inform the homeowner about the right to rescind the contract and the homeowner’s liability after rescission. The bill specifies such contracts can be cancelled within 5 days after signing. After any such rescission, the homeowner must repay any money spent under the agreement on the homeowner’s behalf, within 60 days, along with interest calculated at 8% per year.

The Act requires a foreclosure consultant who provides real estate brokerage services to be licensed as such. The consultant must present a copy of that license to a homeowner before a foreclosure consulting contract is executed.

Maryland Chapter 6 of 2008 directs that if a tenancy agreement is included in a contract for the sale or transfer of a residence in default, the purchaser must provide to a homeowner a specific document about tenancy.

The Act prohibits a foreclosure consultant from receiving a commission for the sale of a residence in default that exceeds 8% of the sales price. The bill also prohibits such consultants from receiving any money to be held in escrow or on a contingent basis on behalf of the homeowner.

This Act grants the state Commissioner of Financial Regulation concurrent jurisdiction with the Attorney General to investigate, enforce, and enjoin action in cases involving violations of the Act. It also requires that the commissioner receive notice containing the name and address of any person convicted under the statute, along with a copy of the judgment, within 30 days of the conviction.

Submitted as:

Maryland

Chapter 6, 2008

Status: Enacted into law in 2008.